

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO.999 OF 2003

IN

SUMMARY SUIT NO. 2074 OF 2003

Vimala Rameshkumar Jain.

... Plaintiff.

V/s.

Jayantilal Pukhraj Jain.

... Defendant.

Mr. S.C. Jodhavat for the Plaintiff.

Mr. Tushar Goradia for the Defendant.

CORAM : DR. D.Y. CHANDRACHUD,J.

18TH JUNE 2007.

P.C. :-

The Suit under Order 37 of the Code of Civil Procedure, 1908 is based on the foundation that a sum of Rs.1.00 lakh was advanced by the Plaintiff to the Defendant by cheques dated 19th March 1999 each in the amount of Rs.50,000/-. The Plaintiff has averred that the entries of the aforesaid payment and the interest due thereon were confirmed by the Defendant while confirming the accounts for the years ending 31st March 1999 and 31st March 2000 respectively. Payments of interest were made for the years ending 31st March 1999 and 31st March 2000 by cheques respectively dated 30th March 1999 and 27th March 2000. The cheques were duly credited. Thereafter, no payment was received despite an Advocate's notice. The Plaintiff has averred that

interest was paid at the rate of 16.80% per annum.

2. In the affidavit in reply to the Summons for Judgment, the material allegations in paragraphs 2 to 4 of the plaint have not been disputed. The Defendant does not dispute the receipt of an amount of Rs.1.00 lakh or the payment of interest. There is no dispute that the accounts were confirmed for the years ending 31st March 1999 and 31st March 2000. The only defence that has been urged at the hearing is that as against the outstandings, the Plaintiff took away, through her husband, a large stock of goods from the Defendant for which accounts were still to be drawn up. The defence is completely vague and lacking in material particulars. Besides, once it is an admitted position that the Defendant has confirmed the settled account for the year ending 31st March 2000, the defence that the goods of the Defendant were taken away ceases to have any practical significance. The Defendant would in the normal course of things have lodged a complaint or at least a letter recording such an event, if it had taken place. The defence is sham.

3. This suit was part of a group of matters in which a reference has been made to the Full Bench. The judgment of the Full Bench has been rendered on 26th April 2007 in **Jyotsna K. Valia V/s. M/s. T.S.**

Parekh & Co. (Summons for Judgment 1117 of 2003 in Summary Suit 1551 of 2003 and connected matters.) Dealing with the position of a settled account or an account stated, the Full Bench has observed as follows

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" In so far as the settled account is concerned, it is no doubt true as noticed by the learned single Judge, that the various judgments adverted to, for holding that the summary suit would lie on a settled account, either of the Privy Council or of the Supreme Court did not arise from suits filed as summary suits. However, after the judgment of the Privy Council (Olvira L. Rodrigues) Sequeira (Supra) which has been considered by the Supreme Court in Hiralal & Ors. (supra), a summary suit on a settled account, duly confirmed by the Defendant is maintainable as it is an acknowledgement by the Defendant in the Ledger in which mutual accounts have been entered and the accounts settled between them. Such settling of accounts gives rise to a written contract on a fresh cause of action, with an implied promise to pay the amount settled. A summary suit would therefore lie on settled accounts duly confirmed by the Defendants. Issue (i) is answered accordingly."

4. In the facts and circumstances of this case, the material allegations in the plaint have not been denied. The Defendant has not denied (i) receipt of the loan; (ii) the payment of interest; and (iii) the confirmation of liability. The Summons for Judgment will therefore have to be made absolute. The Summons for Judgment is accordingly made absolute subject to the modification that the Plaintiff would be entitled to interest at the rate of 9% per annum on the principal sum of Rs.1.00 lakh from 1st April 2000 until the date of the institution of the suit and at the same rate from the date of the institution of the suit until payment or realization.

5. Refund of Court fees if any, as per rules.
